

**CITY OF ALBUQUERQUE**  
ALBUQUERQUE, NEW MEXICO  
PURCHASING DEPARTMENT

INTER-OFFICE CORRESPONDENCE

REF. NO.: SPD2006-074-SB

MASTER RESOLUTION

MARCH 24, 2006

TO: JOHN J. VIGIL, ACTING PURCHASING OFFICER  
FROM: SUZANNE BOEHLAND, SENIOR BUYER  
SUBJECT: SCHWARZE A8000 SWEEPER  
DEPARTMENT: VARIOUS

PURSUANT TO THE AUTHORITY CONTAINED IN SECTION 5-5-10-G-1-A-3 AND APPROVAL PROCEDURES OUTLINED IN SECTION 19-C OF THE PUBLIC PURCHASES ORDINANCE, AUTHORIZATION IS HEREBY REQUESTED FOR THE FOLLOWING:

DESCRIPTION

AMOUNT

SCHWARZE A8000 STREET SWEEPER

INITIATING REQUISITION IS P40846 FOR \$159,615.00 FROM THE MUNICIPAL DEVELOPMENT DEPARTMENT, STREETS MAINTENANCE DIVISION.


VENDOR: SCHWARZE INDUSTRIES  
ATTN: RAYMOND MASSEY  
1055 JORDAN ROAD  
HUNTSVILLE, AL 35881  
(800) 879-7933 X.1140

UNDER H-GAC CONTRACT NO. SW04-04

EFFECTIVE 5/1/2004 THROUGH 3/31/2006. THIS RESOLUTION IS EXTENDABLE AS THE HGAC CONTRACT EXTENDS.

JUSTIFICATION: SCHWARZE INDUSTRIES HAS BEEN AWARDED THE ABOVE MENTIONED HGAC CONTRACT. ELLEN EQUIPMENT WILL HANDLE LOCAL SETUP AND WARRANTY ISSUES OF EQUIPMENT.

APPROVED:

  
JOHN J. VIGIL  
ACTING PURCHASING OFFICER

3/27/2006  
(DATE)

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**Sweepers-Street, Airport Runway & Commercial Industrial****A CONTRACT BETWEEN****HOUSTON-GALVESTON AREA COUNCIL**  
Houston, Texas**AND****Schwarze Industries, Inc.**  
Huntsville, Alabama

This Contract, is made and entered into by the Houston-Galveston Area Council of Governments, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND Schwarze Industries, Inc., hereinafter referred to as the CONTRACTOR, having its principal place of business at 1055 Jordan Road, Huntsville, Alabama 35811.

**WITNESSETH**

**WHEREAS:** The H-GAC enters into this Contract as Agent for participating governmental agencies, hereinafter referred to as END USER, for the purchase of Sweepers-Street, Airport Runway & Commercial Industrial offered by the CONTRACTOR; and

**WHEREAS:** The CONTRACTOR offers to sell Sweepers-Street, Airport Runway & Commercial Industrial through the H-GAC Contract to END USERS and;

**WHEREAS:** The parties have entered into an Sweepers-Street, Airport Runway & Commercial Industrial Contract to become effective as of April 1, 2004, through March 31, 2006 (the "Contract"), subject to extension upon mutual agreement of the CONTRACTOR and H-GAC; and now

**THEREFORE:** H-GAC and the CONTRACTOR, do hereby agree as follows:

**• GENERAL PROVISION ARTICLES 1 - 23 •****ARTICLE 1:****IDENTIFICATION OF CONTRACT DOCUMENTS**

The Contract shall be in effect for Sweepers-Street, Airport Runway & Commercial Industrial listed in Bid Specifications numbered SW04-04, including any relevant suffixes, and shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including, but not limited to, Attachment A
2. Terms and Conditions
3. Bid Specifications No.: SW04-04
4. CONTRACTOR'S Response to Bid No.: SW04-04

The terms and conditions, specifications, manufacture, delivery, warranty, training and service for H-GAC and the END USER shall be fulfilled in compliance with this Contract including, but not limited to Bid Specifications, Terms and Conditions, any Attachment, and CONTRACTOR'S response opened February 5, 2004, unless specifically changed within the text of this Contract Form.

**ARTICLE 2:****LEGAL AUTHORITY**

CONTRACTOR and H-GAC warrant and assure one another that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind both parties to the terms of this Contract and any subsequent amendments thereto.

**ARTICLE 3:****APPLICABLE LAWS**

Both parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances and ordinances, and laws in effect or promulgated during the term of this Contract. CONTRACTOR agrees to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, standards, ordinances and laws in effect or promulgated during the term of this Contract.

**ARTICLE 4:****INDEPENDENT CONTRACTOR**

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of H-GAC or CONTRACTOR. No provision of this Contract or act of H-GAC in performance of this Contract shall be construed as making CONTRACTOR the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of CONTRACTOR are subject to the exclusive control and supervision of CONTRACTOR. CONTRACTOR is solely responsible for employee payrolls and claims arising therefrom.

CONTRACTOR shall notify H-GAC of any lawsuits filed against it which involves products sold pursuant to this Contract, or which, if successful, would adversely affect its financial condition. A lawsuit that includes a specific demand for an amount in excess of \$250,000 and would not be covered by insurance, shall automatically be considered a lawsuit, which, if successful, would adversely affect the financial condition of the sued party.

**ARTICLE 5:****TITLES NOT RESTRICTIVE**

The titles assigned to the various articles of this Contract are for convenience only and are generally descriptive of the matters following. Titles shall not be considered restrictive of the subject matter of any section, or part of this Contract.

**ARTICLE 6:****SUBCONTRACTS**

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior notice to H-GAC. H-GAC reserves the right to accept or reject any of the aforementioned changes to the contract.

CONTRACTOR acknowledges that H-GAC is not liable to any CONTRACTOR'S Subcontractor.

CONTRACTOR shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Contract as if the performance rendered were rendered by CONTRACTOR.

**ARTICLE 7:****EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

CONTRACTOR shall maintain during the course of its work, complete and accurate records of all CONTRACTOR'S costs and documentation of items that are chargeable to END USER under this Contract. H-GAC, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect, copy and audit those records on or off the premises of CONTRACTOR. Failure to provide access to records may be cause for termination of this Contract.

CONTRACTOR shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained.

CONTRACTOR further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that H-GAC'S duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

**ARTICLE 8:****CHANGES AND AMENDMENTS**

Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or state law or regulations are automatically incorporated into this Contract without written amendment hereto, and shall become effective on the date designated by such law or regulation; provided that if CONTRACTOR does not legally comply with such change, H-GAC or CONTRACTOR may terminate the contract as authorized by Article 18.

H-GAC may, from time to time, require changes in the scope of the services of CONTRACTOR to be performed hereunder. Such changes that are mutually agreed upon in writing by and between H-GAC and CONTRACTOR shall be incorporated into this Contract.

**ARTICLE 9:****DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to CONTRACTOR. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, CONTRACTOR requests a rehearing from the Executive

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Director of H-GAC. In connection with any rehearing under this Article, CONTRACTOR shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. CONTRACTOR may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Contract and in accordance with H-GAC'S final decision.

**ARTICLE 10:****SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 11:****FORCE MAJEURE**

To the extent that either party to this Contract shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of, or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with H-GAC. Such determination is not to be unreasonably withheld.

**ARTICLE 12:****NON-DISCRIMINATION AND EQUAL OPPORTUNITY**

CONTRACTOR agrees to comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in any specific statute(s) applicable to any Federal funding for this Contract; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this Contract.

**ARTICLE 13:****CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS**

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of any funding entity. CONTRACTOR agrees to promptly notify H-GAC of any suspected fraud, abuse or other criminal activity through filing of a written report within twenty-four (24) hours of knowledge thereof. CONTRACTOR shall notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Contract within twenty-four (24) hours of such occurrence. Theft or willful damage to property on loan to CONTRACTOR from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

CONTRACTOR further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit responsible for carrying out a full investigation of any such accident or incidents.

**ARTICLE 14: ISSUANCE OF PURCHASE ORDERS THROUGH INTERLOCAL CONTRACTS**

Through Interlocal Contracts, H-GAC offers governmental agencies and qualifying non-profit corporations the opportunity to participate in the H-GAC Cooperative Purchasing Program. Therefore, purchase orders may be executed by END USERS throughout the state. In addition, through Interstate Interlocal Contracts, the Program is now made available for possible participation by END USERS beyond Texas.

**ARTICLE 15:****SCOPE OF SERVICES**

The services to be performed by CONTRACTOR are outlined within this Contract, Bid specifications, any Attachment, and Bid Response. Any Change Order shall be stated in complete detail and submitted by END USER to CONTRACTOR and copied to H-GAC. No verbal Change Order shall be accepted by CONTRACTOR from any END USER.

**ARTICLE 16:****THE COMPLETE AGREEMENT**

This Contract consists of the Contract text stated herein, any Attachment, the Bid Specifications, including but not limited to Terms and Conditions, CONTRACTOR'S response, including but not limited to, prices and options offered all of which are incorporated within this contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

**ARTICLE 17:****LIMITATION ON LIABILITY**

CONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to END USER, any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

Except for personal injury or death, CONTRACTOR'S total liability whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, is limited to the price of the particular products sold hereunder with respect to which either refund the purchase price, repair or replace product(s) that are not warranted. In no event will CONTRACTOR be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special, or consequential damages to the full extent such may be disclaimed by law.

**ARTICLE 18:****TERMINATION PROCEDURES**

CONTRACTOR acknowledges that this Contract may be terminated under the following circumstances:

**A. Convenience**

H-GAC may terminate this Contract in whole or in part without cause at any time by written notice by certified mail to CONTRACTOR whenever for any reason H-GAC determines that such termination is in the best interest of H-GAC. Upon receipt of notice of termination, all services hereunder of CONTRACTOR and its employees and subcontractors shall cease to the extent specified in the notice of termination. In the event of termination in whole, CONTRACTOR shall prepare final invoices within 30 calendar days of such termination reflecting the services actually performed which have not appeared on any prior invoice. Such invoices shall be satisfactory to the Executive Director or his designee. END USER will pay CONTRACTOR, in accordance with the terms and conditions of this Contract, for services actually performed and accruing to the benefit of END USER less any compensation previously paid. H-GAC, in accordance with the terms and conditions of this Contract, will invoice CONTRACTOR for any administrative fees due, and CONTRACTOR agrees to pay said fees.

CONTRACTOR may cancel or terminate this Contract upon thirty (30) days written notice by certified mail to H-GAC. CONTRACTOR may not give notice of cancellation after it has received notice of default from H-GAC. In the event of such termination prior to completion of this Contract provided for herein, END USER will pay CONTRACTOR, in accordance with the terms and conditions of this Contract, for services actually performed and accruing to the benefit of END USER less any compensation previously paid. H-GAC, in accordance with the terms and conditions of this Contract, will invoice CONTRACTOR for any administrative fees due, and CONTRACTOR agrees to pay said fees.

**B. Default**

H-GAC may, by written notice of default to CONTRACTOR, terminate the whole or any part of this Contract in any one of the following circumstances:

- (1) If CONTRACTOR fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If CONTRACTOR fails to perform any of the provisions of this Contract for any reason whatsoever, or so fails to make progress or otherwise violates this Contract that completion of services herein specified within the term of this Contract is significantly endangered, and in either of these two instances does not cure such failure within a period of ten (10) calendar days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

In the event of such termination, all services of CONTRACTOR and its employees and subcontractors shall cease and CONTRACTOR shall prepare final invoices reflecting the services actually performed pursuant to this Contract which have not appeared on any prior invoice. Such invoice must be satisfactory to the END USER and to the Executive Director of H-GAC or his designee. END USER reserves the right, in accordance with the terms and conditions of this

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Contract, to withhold from the payment of said invoices for services actually performed and accruing to the benefit of END USER, as reflected on invoices, any compensation previously paid and any costs or damages incurred by END USER as a result of such default, including incremental costs that END USER will incur to have Purchase Order(s) completed by a person other than CONTRACTOR. H-GAC, in accordance with the terms and conditions of this Contract, will invoice CONTRACTOR for any administrative fees due, and CONTRACTOR agrees to pay said fees.

C. Licensing required by Texas Motor Vehicle Division (if applicable)

CONTRACTOR will for the duration of this contract maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Division issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Division documentation to H-GAC upon request.

D. Final Billing In the Event of Termination

CONTRACTOR shall fill all pending orders and then prepare final invoices reflecting the services actually performed pursuant to this Contract and to the satisfaction of H-GAC'S Executive Director or his designee. END USER will pay CONTRACTOR, in accordance with the terms and conditions of this Contract, for services actually performed and accruing to the benefit of END USER less any compensation previously paid. H-GAC, in accordance with the terms and conditions of this Contract, will invoice CONTRACTOR for any administrative fees due, and CONTRACTOR agrees to pay said fees.

ARTICLE 12:GOVERNING LAW & VENUE

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas.

ARTICLE 20:CONTRACTOR'S REPRESENTATIVE

CONTRACTOR'S representative(s) shall be the contact person(s) concerning all matters pertaining to END USER orders. Any change of representation shall be immediately communicated in written form to H-GAC by CONTRACTOR.

END USER will remit all payments to CONTRACTOR under this Contract Under no circumstances shall checks be made payable to a representative. Should a representative submit invoices to END USER for reimbursement of costs relating to an END USER Purchase Order for products/services, the Invoice shall be forwarded to CONTRACTOR.

ARTICLE 21:REPORTING REQUIREMENTS

Upon request by H-GAC, CONTRACTOR shall provide monthly written reports to H-GAC. Such reports may include, but are not limited to the following: detailing of all orders received, scheduled production, and scheduled delivery under this contract.

If CONTRACTOR fails to submit to H-GAC in a timely and satisfactory manner any report or other documentation required by this Contract, or otherwise fails to satisfactorily render performances hereunder, such failure may be considered cause for termination of this Contract.

ARTICLE 22:MOST FAVORED CUSTOMER CLAUSE

If CONTRACTOR, at any time during a contract period, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to H-GAC on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to H-GAC, CONTRACTOR shall provide within ten (10) business days thereafter notify H-GAC of that offering. This Contract with H-GAC shall be deemed to be automatically amended and effective retroactively to the effective date of the most favorable contract, wherein CONTRACTOR shall provide the same prices, warranties, benefits, or terms to H-GAC and its END USER. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If CONTRACTOR is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this agreement is not in fact most favored treatment, CONTRACTOR shall within ten (10) business days notify H-GAC in writing, setting forth the detailed reasons CONTRACTOR believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. H-GAC, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between H-GAC and CONTRACTOR shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to H-GAC.

The Parties accept the following definition of routine: *A prescribed, detailed course of action to be followed regularly; a standard procedure.*

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**EXCEPTION:** This clause shall not be applicable to prices and price adjustments offered by a bidder, or contractor, which are not within bidder's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.

ARTICLE 23:INDEMNIFICATION

CONTRACTOR agrees, to the extent permitted by law, to defend and hold harmless H-GAC, the State of Texas, the United States Government and their respective board members, officers, agents, officials, and employees from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and fees arising as a result of CONTRACTOR'S act or omission under this Contract, CONTRACTOR'S non-performance of this Contract, or CONTRACTOR'S violation of any law, regulation or other standard incorporated herein. CONTRACTOR shall notify H-GAC of the threat of lawsuit or of any actual suit filed against CONTRACTOR relating to this Contract.

## \* PRODUCT SPECIFIC ARTICLES 24-39 \*

ARTICLE 24PROCEDURAL STEPS ENUMERATED FOR SALES TO END USERS

1. All Cooperative Purchasing business will be processed in accordance with H-GAC's policies and procedures, at contracted prices, and shall include approved administrative fees.
2. END USER will access the Cooperative Purchasing Program through the H-GAC website and by submission of any duly executed purchase order to a contractor having a valid contract with H-GAC and in a format acceptable to H-GAC.
3. END USER will issue Purchase Order(s) directly to CONTRACTOR at contract prices, and also submit a copy to H-GAC.
4. H-GAC will confirm each END USER Purchase Order and issue an "Order Confirmation" document, confirming the order to the contract, to the H-GAC CONTRACTOR, assigned manufacturer or dealer/distributor and to the END USER.
5. CONTRACTOR must enter shipping and estimated delivery information on H-GAC's website, [www.HGACBuy.com](http://www.HGACBuy.com) and systematically update the information prior to delivery. CONTRACTOR shall also use its best efforts to expedite product deliveries on shorter notice than set forth in its verification for any specific purchase order when requested.
6. The H-GAC CONTRACTOR, assigned manufacturer or dealer/distributor will deliver products/services as specified by the contract between CONTRACTOR and H-GAC, and invoice each END USER only after receipt of (1) H-GAC'S "Order Confirmation" document and (2) END USER'S Purchase Order. Contractor's invoice shall not predate either the date of the END USER's purchase order or H-GAC's "order confirmation."
7. CONTRACTOR shall make product(s) available for acceptance, as specified in bid response, by END USER, ready for operation and in conformity with manufacturer's specified procedures, subject to CONTRACTOR'S ability to obtain product(s) from manufacturer in sufficient quantity of the type ordered, in the time specified, and subject to any other contingency beyond the control of CONTRACTOR. END USER acceptance shall be defined as the successful delivery and inspection of product by the END USER'S designee. All required equipment tests will be borne by CONTRACTOR.
8. END USER will take delivery of each product ordered immediately upon notice that pre-delivery preparation service has been completed by CONTRACTOR'S delivery agent and the product is ready to be picked up or to be delivered, provided that such product (new unless otherwise specified) is of the make and model ordered, contains the equipment ordered, and is in good working order. CONTRACTOR shall be responsible for delivery and acceptance of by END USER.
9. The H-GAC CONTRACTOR, assigned manufacturer or dealer/distributor will invoice each END USER for (1) products/services purchased and (2) H-GAC'S applicable administrative fee.
10. Upon delivery, acceptance, and receipt of an H-GAC CONTRACTOR's, assigned manufacturer's or dealer's/distributor's properly documented invoice, END USER shall pay the H-GAC CONTRACTOR, assigned manufacturer or dealer/distributor the full amount of the invoice.
11. H-GAC will invoice the H-GAC CONTRACTOR, assigned manufacturer or dealer/distributor for all H-GAC administrative fees at the time "order confirmation" is issued.

12. Upon receipt of an H-GAC invoice, and delivery of a product/service by CONTRACTOR and acceptance by END USER, H-GAC CONTRACTOR, assigned manufacturer or dealer/distributor will promptly, and in any case, within Thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay H-GAC the full amount of the administrative fee invoice.

H-GAC reserves the right to invoice END USER for H-GAC's administrative fees.

13. For any payment past due, H-GAC reserves the right to collect its administrative fee in accordance with terms of the "Payment or Performance Bond." In addition, failure to promptly remit H-GAC's fees may result in sanctions including, but not limited to, contract termination.
14. All prices are F.O.B. END USER'S location with all transportation charges prepaid and included in any invoice.
15. All pricing shall be based on the current contract unless the H-GAC CONTRACTOR, assigned manufacturer or dealer/distributor, prior to receipt of END USER's Purchase order for delivery of any products/services has received H-GAC's written approval for any price increases.
16. The H-GAC CONTRACTOR, assigned manufacturer or dealer/distributor agrees to accept the terms of this agreement and to conduct all transactions based on pricing and other terms of the contract including, but not limited to, the applicable H-GAC administrative fee. The CONTRACTOR agrees to encourage END USERS to execute authorizing Interlocal contracts with H-GAC. The fee shall be payable to H-GAC by the H-GAC Contractor, assigned manufacturer or dealer/distributor.

**ARTICLE 25:****PRE-PAYMENTS AND DISCOUNTS**

1. Progress and pre-payment discounts offered by CONTRACTOR shall be fully disclosed to END USER by CONTRACTOR'S representative and subsequently listed on the END USER'S purchase order to CONTRACTOR.
2. Discounts may be offered by CONTRACTOR based on similarly constructed products and quantity purchases. Discounts may be stated in either dollar amount or percentage and shall be applicable to CONTRACTOR defined number of similar units. CONTRACTOR shall be the sole source of determination as to similar designation.

**ARTICLE 26:****LIABILITY INSURANCE**

CONTRACTOR shall have the following insurance and coverage minimums in place; and shall provide proof of said insurance upon request by H-GAC.

General Liability	\$1,000,000 per single occurrence
Product liability	\$1,000,000 per single occurrence
Property Damage or Destruction	\$ 500,000 per single occurrence

Insurance coverage shall be in effect for the length of this Contract and any extensions thereof, plus the number of months or days required to deliver any outstanding order after the close of this Contract. CONTRACTOR shall promptly notify H-GAC of cancellation or material changes in insurance coverage during this contract period.

**ARTICLE 27:****COMPLETION AND LIQUIDATED DAMAGES**

Under the terms of this Contract, CONTRACTOR certifies to complete delivery of equipment and accessories within the specified calendar days as listed on bid response and/or stated on each END USER purchase order counting from the date any relevant END USER purchase order is received by CONTRACTOR based upon the schedule provided by CONTRACTOR'S representative for each order. Delivery dates specified on purchase orders as negotiated between an END USER and CONTRACTOR'S representative shall take precedence over "specified calendar days".

CONTRACTOR agrees that time is of the essence in performance of this Contract. CONTRACTOR and H-GAC understand and agree that a breach of Contract, as to completion on time, will cause damage to H-GAC and its END USERS, and that such damages would be difficult or impossible to measure. Therefore, for each and every calendar day that equipment is not delivered beginning thirty one (31) days after the expiration of the time set in the END USER purchase order, END USER may withhold permanently from CONTRACTOR'S total compensation the sum of fifty dollars (\$50.00) per calendar day as liquidated damages, not to exceed the value of outstanding orders. In the case where END USER's purchase order contains a liquidated damages clause, END USER's purchase order will prevail. Assessment and/or collection of liquidated damages does not relieve CONTRACTOR of any responsibility to deliver products and/or services listed on the relevant END USER purchase order and any change order.



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CONTRACTOR and H-GAC agree that the sum stipulated as liquidated damages is a reasonable estimate of the damage which will result to H-GAC and END USERS from failure of CONTRACTOR to deliver product and/or services in accordance with this Contract. The amount of liquidated damages shall be immediately due and payable upon demand.

CONTRACTOR shall document and immediately notify END USER and H-GAC of any conditions of Force Majeure that would cause exception to assessment of Liquidated Damage. [See Article 11: "Force Majeure"]

ARTICLE 28:COMPLIANCE WITH BID SPECIFICATIONS

The Contract herein provides certain details emphasizing the intent of the bid specifications:

Warranty:

H-GAC shall hold CONTRACTOR responsible for the execution and effectiveness of all product warranty. H-GAC shall look only to CONTRACTOR as the sole source for solution to problems arising from warranty claims. CONTRACTOR agrees to respond directly to correct warranty claims and to ensure reconciliation of warranty claims that have been assigned to a third party.

Selection of Components:

CONTRACTOR shall determine the selection of quality components. Since durability and warranty provisions are an inherent consideration in the selection process, H-GAC and its END USERS subject themselves to a trust relationship with CONTRACTOR to deliver products and accessories that comply with standards set for the specified product detail in the bid specifications.

CONTRACTOR'S Default:

Should CONTRACTOR default in providing the equipment as specified in the specifications, and in this Contract, recourse may be exercised through the performance bond or other legal remedies.

Delivery to END USER:

CONTRACTOR shall schedule delivery to END USER sites in coordination with the relevant END USER's site.

Accessories and Options:

All accessories and options offered by CONTRACTOR shall become part of this Contract.

ARTICLE 29:PRICE CHANGES

1. No price increases shall be allowed during the first twelve (12) months of this Contract period.
2. Any request for a price change must be submitted to H-GAC on CONTRACTOR'S letterhead, must be signed by a corporate officer, and must be received by H-GAC at least forty five (45) calendar days prior to the requested effective date of the increase.
3. Price increase requests **MUST** be supported by documentation, acceptable to H-GAC, concerning CONTRACTOR'S actual cost increase.
4. H-GAC reserves the right to accept or reject any price change request.

In cases involving contract extensions exceeding sixty-one (61) days beyond the stated expiration date of this Contract, CONTRACTOR may request a price change based on the same conditions as stated above. However, the forty-five (45) day prior notice is waived and H-GAC will consider the request immediately on receipt.

ARTICLE 30:SUBSTITUTIONS AND DEVIATIONS

During this contract period or project implementation, it is understood that CONTRACTOR may, upon written agreement implement changes in the Products offered through this Contract, or substitute products of more recent technological designs. H-GAC and its END USERS shall determine whether such changes, modifications or substitutions will materially or adversely affect physical or functional interchangeability or performance.

ARTICLE 31:BLANKET PERFORMANCE BOND

A blanket Performance Bond in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) shall be submitted to H-GAC by CONTRACTOR before performance under this Contract. This bond shall be in effect for the length of this Contract plus the number of months/days required to complete delivery of any outstanding order after the close of this Contract.

**ARTICLE 32:****INSPECTIONS BY H-GAC**

CONTRACTOR agrees to provide access to H-GAC authorized personnel for inspection of operating facilities and auditing of purchase orders during this Contract period, and for a period extending to the completion of any and all equipment ordered under the terms of this Contract. Site inspections shall be arranged not less than ten (10) calendar days before said inspections and shall state the name(s) of persons who will conduct the inspections. CONTRACTOR shall not incur expenses relating thereto.

**ARTICLE 33:****BID PRICES OFFERED BY CONTRACTOR**

Pricing listed in CONTRACTOR'S Bid Response as stated on *Forms D through F* shall be applicable to all products, accessories and equipment ordered under the terms of this Contract. Additional discounts may be offered at the sole discretion of CONTRACTOR.

**ARTICLE 34:****CHANGE ORDER PROVISIONS**

Texas statutes limit change orders to an amount not exceeding twenty-five (25%) of the bid price. A decrease of like amount is also provided. For the purpose of H-GAC procedures, the bid price includes the base bid amount and all priced options submitted with the bid response.

**ARTICLE 35:****ORDER CANCELLATION**

In the event CONTRACTOR is unable to deliver a product/service by the scheduled delivery date, and the delay is caused by factory production delays exceeding one hundred twenty (120) days from the delivery date set in the purchase order, said product/service shall be subject to possible cancellation by END USER.

CONTRACTOR shall notify END USER and H-GAC of any conditions of Force Majeure that might cause delay in delivery of products/services. [See Article 11: "Force Majeure"]

**ARTICLE 36:****CHANGE OF OWNERSHIP**

CONTRACTOR shall notify H-GAC of any material change in name, ownership or control. Such notification shall be supplied within ten (10) business days of such change.

**ARTICLE 37:****NON-COMPETE CLAUSE**

CONTRACTOR'S published or unpublished options may not compete with another Contractor's base bid award.

**ARTICLE 38:****HISTORICALLY UNDERUTILIZED BUSINESSES**

H-GAC, acting on behalf of its END USERS to satisfy legislative requirements [Government code, Chapter 2161, Subchapter D], captures data relative to participation of HUB enterprises in furnishing of products/services through H-GAC contracts. In that regard, H-GAC will require CONTRACTOR to furnish data relative to any of its HUB subcontractors whose services are included in the CONTRACTOR'S contract with H-GAC. CONTRACTOR agrees to furnish such information when requested by H-GAC.

**ARTICLE 39:****CONTRACT PERFORMANCE**

CONTRACTOR must meet the following performance criteria at all times, and to H-GAC's complete satisfaction. Failure to do so may be considered to be non-compliant performance and may result in contract termination at H-GAC's sole discretion.


1. CONTRACTOR shall maintain sufficient qualified staff to process Purchase Orders, and to respond promptly by telephone, fax, and email.
2. CONTRACTOR shall participate in orientation and training as may be required by H-GAC.
3. H-GAC reserves the right to request that a new Sales Representative be assigned to the contract (Bid Specifications, General Terms and Conditions).
4. CONTRACTOR shall provide toll free line(s) for access by H-GAC's End Users.
5. CONTRACTOR will not in any manner whatsoever direct or encourage H-GAC End User Participants to purchase contracted items by any means other than through the H-GAC Contract.
6. All Products/services sold and delivered will include all current manufacturer's standard features at no additional charge, and meet all H-GAC requirements and specifications in all respects.
7. Scheduled delivery dates will be met in all cases unless prevented by Force Majeure.

Sweetwater Street, Airport Runway &amp; Commercial Industrial

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This contract, signed in two originals by both parties, shall become effective on the First day of April, 2004 and shall remain in effect for a period ending on the Thirty First day of March, 2006 at Midnight Central Time unless extended by mutual agreement in written form. The Bid Specifications numbered SW04-04, Terms and Conditions, and Contractor's Response documents as identified in Article 1, are parts of this contract.

Signed for Houston-Galveston  
Area Council, Houston, Texas:

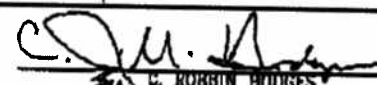
  
Jack Stoeck, Executive Director  
Date: June 2, 2004

Attest for Houston-Galveston  
Area Council, Houston, Texas:

Dolore Vick, Public Services Manager

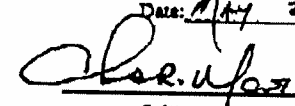
Date: May 25, 2004

Signed for Schwarze Industries, Inc.  
Huntsville, Alabama:

  
C. M. Robbin, Vice President - Finance  
Printed Name & Title: C. M. Robbin, Vice President - Finance

Date: May 24, 2004

Attest for Schwarze Industries, Inc.  
Huntsville, Alabama:

  
Charles R. Massey, Jr.  
Printed Name & Title: Charles R. Massey, Jr.  
Product Sales Manager

Date: May 24, 2004

## Attachment A

Schwarze Industries, Inc.

Sweepers-Street, Airport Runway &amp; Commercial Industrial

Contract No. :SW04-04

Recommended Awarded(s)	Product Code	Manufacturer, Model and Description	Bid Price
<b>STREET SWEEPERS-PURPOSE BUILT</b>			
Schwarze Industries, Inc.	AHE	Schwarze EV1 Fine Particulate Surface and Air Cleaner	275,000
Schwarze Industries, Inc.	AHF	Schwarze EV2 Fine Particulate Surface and Air Cleaner	225,000
<b>STREET SWEEPERS-COMMERCIAL CAB/CHASSIS MOUNTED</b>			
Schwarze Industries, Inc.	BHA	Schwarze A4000 Regenerative Air Street Sweeper	43,180
Schwarze Industries, Inc.	BHB	Schwarze A7000 Regenerative Air Street Sweeper	61,750
Schwarze Industries, Inc.	BHC	Schwarze A8000 Regenerative Air Street Sweeper	84,180
Schwarze Industries, Inc.	BHD	Schwarze A9000 Regenerative Air Street Sweeper	74,680
Schwarze Industries, Inc.	BHG	Schwarze M5000 Mechanical Street Sweeper	88,300
Schwarze Industries, Inc.	BHH	Schwarze M6000 Single Engine Mechanical Street Sweeper	89,420
Schwarze Industries, Inc.	BHI	Schwarze M6000 Twin Engine Mechanical Street Sweeper	96,720
Schwarze Industries, Inc.	BHK	Schwarze 348 LE Parking Area Sweeper	50,965
Schwarze Industries, Inc.	BHL	Schwarze 348-I Parking Area Sweeper	47,705
Schwarze Industries, Inc.	BHM	Schwarze 347-I Parking Area Sweeper	44,605
Schwarze Industries, Inc.	BHN	Schwarze 343G Parking Area Sweeper	44,605
Schwarze Industries, Inc.	BHO	Schwarze 343D Parking Area Sweeper	44,605
Schwarze Industries, Inc.	BHP	Schwarze PVII Slide In Parking Area Sweeper	15,900
Schwarze Industries, Inc.	BHP	Schwarze PVII Parking Lot Sweeper Trailer Mounted	17,100

Contract No. SW04-04

**Sweepers - Street, Airport Runway & Commercial/Industrial****Contract Period: April 1, 2004 to March 31, 2006**

Click on the Type below to shortcut to that section

Street Sweepers - Purpose Built/Purpose Built

Street Sweepers - Commercial Cab/Chassis Mounted

Sweepers - Airport Runway

Sweepers - Commercial/Industrial Riding

Sweepers - Commercial/Industrial Walk-Behind

Contractor Contacts

H-GAC Staff Contact

Note: The following prices are for "base units". For sweepers requiring a commercial cab-chassis, pricing is for the sweeper body only. Cab/chassis may be supplied by contractor or buyer. Please call the appropriate contractor for a GAC contract pricing quotation, including any required options and accessories.

Product Code	Model & Description	Base Price	Contractor
<b>Street Sweepers - Purpose Built</b>			
Back to Top			
ABA	Echo Model 100	\$81,452	Hi-Vac Corp
ABB	Echo Model 101	\$96,098	Hi-Vac Corp
ACC	Elgin Pelican P	\$103,890	Elgin Kinloch Equipm STM Equipme
ACD	Elgin Pelican SE	\$109,141	Elgin Kinloch Equipm STM Equipme
ADB	Johnston Sweeper Co. 3000 20 MPH Mechanical Sweeper	\$95,148	Johnston Sweep
ADC	Johnston Sweeper Co. 4000 55 MPH Mechanical Sweeper	\$132,000	Johnston Sweep
AEA	MadVac CS 500 Diesel Engine Compact Vacuum Street/Sidewalk Sweeper	\$76,400	Madvac, Inc
AHE	Schwarze EV1 Fine Particulate Surface and Air Cleaner	\$275,000	Schwarze Industrie
AHF	Schwarze EV2 Fine Particulate Surface and Air Cleaner	\$225,000	Schwarze Industrie
<b>Street Sweepers - Commercial Cab/Chassis Mounted</b>			
Back to Top			
BCA	Elgin Crosswind J Plus	\$71,870	Elgin Kinloch Equipm STM Equipme
BCB	Elgin Air Bear	\$94,899	Elgin Kinloch Equipm STM Equipme
BCE	Elgin Eagle F	\$104,386	Elgin Kinloch Equipm STM Equipme
BCF	Elgin Broom Bear	\$92,419	Elgin Kinloch Equipm STM Equipme
BCG	Elgin Road Wizard	\$103,076	Elgin Kinloch Equipm

<https://www.hgacbuy.com/products/OutState/stweep.htm>

3/21/2006

			STM Equipme
<b>BCH</b>	Elgin Geovac	\$94,949	Elgin Kinloch Equipm STM Equipme
<b>BCI</b>	Elgin Whirlwind MV	\$89,301	Elgin Kinloch Equipm STM Equipme
<b>BCL</b>	Elgin Air Cub LX	\$43,708	Elgin Kinloch Equipm STM Equipme
<b>BCM</b>	Elgin Air Cub RX	\$44,271	Elgin Kinloch Equipm STM Equipme
<b>BDA</b>	Johnston Sweeper Co. 770 Regenerative Air Sweeper	\$82,918	Johnston Sweepe
<b>BDF</b>	Johnston Sweeper Co. 605 Vacuum Sweeper	\$89,228	Johnston Sweepe
<b>BDG</b>	Johnston Sweeper Co. 705 Vacuum Sweeper	\$109,000	Johnston Sweepe
<b>BHA</b>	Schwarze A4000 Regenerative Air Street Sweeper	\$45,691	Schwarze Industrie
<b>BHB</b>	Schwarze A7000 Regenerative Air Street Sweeper	\$64,911	Schwarze Industrie
<b>BHC</b>	Schwarze A8000 Regenerative Air Street Sweeper	\$88,126	Schwarze Industrie
<b>BHD</b>	Schwarze A9000 Regenerative Air Street Sweeper	\$78,294	Schwarze Industrie
<b>BHG</b>	Schwarze M5000 Mechanical Street Sweeper	\$92,390	Schwarze Industrie
<b>BHH</b>	Schwarze M6000 Single Engine Mechanical Street Sweeper	\$93,363	Schwarze Industrie
<b>BHI</b>	Schwarze M6000 Twin Engine Mechanical Street Sweeper	\$101,105	Schwarze Industrie
<b>BHK</b>	Schwarze 348 LE Parking Area Sweeper	\$50,965	Schwarze Industrie
<b>BHL</b>	Schwarze 348-I Parking Area Sweeper	\$47,705	Schwarze Industrie
<b>BHM</b>	Schwarze 347-I Parking Area Sweeper	\$44,605	Schwarze Industrie
<b>BHN</b>	Schwarze 343G Parking Area Sweeper	\$44,605	Schwarze Industrie
<b>BHO</b>	Schwarze 343D Parking Area Sweeper	\$44,605	Schwarze Industrie
<b>BHP</b>	Schwarze PVII Slide In Parking Area Sweeper	\$15,900	Schwarze Industrie
<b>BHP</b>	Schwarze PVII Parking Lot Sweeper, Trailer Mounted	\$17,100	Schwarze Industrie
<b>BJA</b>	TYMCO Intn'l LTD Model 210 Regenerative Air Sweeper	\$32,145	TYMCO Intn'l
<b>RJB</b>	TYMCO Intn'l LTD Model 210 SRE Regenerative Air Sweeper	\$36,000	TYMCO Intn'l
<b>BJC</b>	TYMCO Intn'l LTD Model 455 Regenerative Air Sweeper	\$41,980	TYMCO Intn'l
<b>BJD</b>	TYMCO Intn'l LTD Model DST-4 Regenerative Air Sweeper	\$87,600	TYMCO Intn'l
<b>BJE</b>	TYMCO Intn'l LTD Model DST-6 Regenerative Air Sweeper	\$121,550	TYMCO Intn'l
<b>BJF</b>	TYMCO Intn'l LTD Model 600 Regenerative Air Sweeper	\$63,900	TYMCO Intn'l
<b>BJH</b>	TYMCO Intn'l LTD Model 500x Regenerative Air Sweeper	\$111,985	TYMCO Intn'l
<b>Sweepers - Airport Runway</b>			
Back to Top			
<b>CCJ</b>	Crosswind FSX	\$73,911	Elgin Kinloch Equipm STM Equipme
<b>CCK</b>	GRV - Glycol Recovery Vehicle	\$275,449	Elgin Kinloch Equipm STM Equipme
<b>CJG</b>	TYMCO Intn'l LTD Model 600 HSP Regenerative Air Sweeper	\$75,500	TYMCO Intn'l
<b>Sweepers - Commercial/Industrial, Riding</b>			
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<b>DBC</b>	Echo Model 34D	\$24,763	Hi-Vac Corr
<b>DBD</b>	Echo Model 34E	\$25,134	Hi-Vac Corr
<b>DBE</b>	Echo Model 34 Gas/LP	\$27,022	Hi-Vac Corr
<b>DBF</b>	Echo Model 38D	\$32,923	Hi-Vac Corr
<b>DEG</b>	Echo Model 38E	\$34,001	Hi-Vac Corr
<b>DBH</b>	Echo Model 38 Gas/LP	\$34,347	Hi-Vac Corr

<b>DBI</b>	Echo Model 40D	\$37,130	Hi-Vac Corp
<b>DBK</b>	Echo Model 40 Gas/LP	\$38,240	Hi-Vac Corp
<b>DBL</b>	Echo Model 48D	\$41,141	Hi-Vac Corp
<b>DBM</b>	Echo Model 48E	\$43,552	Hi-Vac Corp
<b>DBN</b>	Echo Model 48 Gas/LP	\$42,595	Hi-Vac Corp
<b>DBO</b>	Echo Model 50D	\$42,361	Hi-Vac Corp
<b>DBP</b>	Echo Model 50E	\$43,640	Hi-Vac Corp
<b>DBQ</b>	Echo Model 50 Gas/LP	\$43,574	Hi-Vac Corp
<b>DEC</b>	MadVac PS-300 diesel engine Walk-behind Ride-on Sidewalk Sweeper	\$19,975	Madvac, Inc
<b>DEF</b>	MadVac 101 diesel engine ride-on 3-whl Liter Vacuum Collector	\$24,950	Madvac, Inc
<b>DEG</b>	MadVac 101 diesel engine ride-on 4-whl Liter Vacuum Collector	\$25,545	Madvac, Inc
<b>DEH</b>	MadVac 231D diesel engine 4-whl enclosed cab High Dump Liter Collector	\$61,900	Madvac, Inc

### Sweepers - Commercial/Industrial, Walk-Behind

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<b>EEB</b>	MadVac PS-300 diesel engine Walk-behind Sidewalk Sweeper	\$18,990	Madvac, Inc
<b>EED</b>	MadVac 61 diesel engine Skid Mounted Liter Collector	\$18,250	Madvac, Inc
<b>EEF</b>	MadVac 61 diesel engine Trailer Mounted Liter Collector	\$18,990	Madvac, Inc

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### Contractor Contacts:

Contractor	Email	Phone	Contact
<b>Hi-Vac Corp.</b>	<a href="mailto:sales@hi-vac.com">sales@hi-vac.com</a>	800-752-2400	Richard Sab
<b>Johnston Sweeper</b>	<a href="mailto:jbudde@johnstonsweeper.com">jbudde@johnstonsweeper.com</a>	909-613-5614	Jim Budde
<b>Madvac, Inc.</b>	<a href="mailto:apollmueller@madvac.com">apollmueller@madvac.com</a>	800-862-3822	Andreas Pollum
<b>Schwarze</b>	<a href="mailto:rmassey@schwarze.com">rmassey@schwarze.com</a>	800-879-7933	Raymond Mas
<b>Tymco</b>	<a href="mailto:tymcoales@tymco.net">tymcoales@tymco.net</a>	800-258-9626	Bobby Johnse

### Elgin Sweeper Co. & Dealers:

<b>Elgin Sweeper Co.</b>	<a href="mailto:tsybilrud@elginsweeper.com">tsybilrud@elginsweeper.com</a>	612-991-1746	Tom Sybilru
<b>Kinloch Equipment</b>	<a href="mailto:tkinloch@kinlochequip.com">tkinloch@kinlochequip.com</a>	800-231-6929	Todd Kinloc
<b>STM Equipment</b>	<a href="mailto:tmalley@stmtequip.com">tmalley@stmtequip.com</a>	800-536-5902	Terry Mallo

### H-GAC STAFF CONTACT

<b>Ron Williamson</b>	<a href="mailto:ron.williamson@h-gac.com">ron.williamson@h-gac.com</a>	713-993-2410	Fx: 713-993-45
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Note: Upon receipt of written dealer quotation, please address purchase orders to the name of the authorized dealer a copy with the written quotation to H-GAC staff contact above.

Non-H-GAC Cooperative Purchasing Program member must enroll in the program, free of charge, before issuing purchase orders. The necessary document can be obtained with the following link:

[Click Here For Enrollment Form](#)

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